

## **DISCUSSION DRAFT (June 26, 2002)**

**Possible revisions to SBOH rules governing the emergency powers of local health officers and their authority to isolate and quarantine in the event of a communicable disease outbreak or bioterrorism event. The changes would—**

- **Define due process protections for LHOs' existing authority**
- **Highlight in WAC the applicable enforcement provisions in RCW**

### **[REVISIONS TO CHAPTER 246-100 WAC—COMMUNICABLE AND CERTAIN OTHER DISEASES]**

**WAC 246-100-011 Definitions.** The following definitions shall apply in the interpretation and enforcement of chapter 246-100 WAC:

(1) "Acquired immunodeficiency syndrome (AIDS)" means illness, disease, or conditions defined and described by the Centers for Disease Control, U.S. Public Health Service, Morbidity and Mortality Weekly Report (MMWR), December 18, 1992, Volume 41, Number RR-17. A copy of this publication is available for review at the department and at each local health department.

(2) "AIDS counseling" means counseling directed toward:

- (a) Increasing the individual's understanding of acquired immunodeficiency syndrome; and
- (b) Assessing the individual's risk of HIV acquisition and transmission; and
- (c) Affecting the individual's behavior in ways to reduce the risk of acquiring and transmitting HIV infection.

(3) "Board" means the Washington state board of health.

(4) "Case" means a person, alive or dead, having been diagnosed to have a particular disease or condition by a health care provider with diagnosis based on clinical or laboratory criteria or both.

(5) "Child day care facility" means an agency regularly providing care for a group of children for less than twenty-four hours a day and subject to licensing under chapter 74.15 RCW.

(6) "Communicable disease" means an illness caused by an infectious agent which can be transmitted from one person, animal, or object to another person by direct or indirect means including transmission via an intermediate host or vector, food, water, or air.

(7) "Contaminated" or "contamination" means containing or having contact with infectious agents or chemical or radiological materials that pose immediate or long-term hazards to human health.

(8) "Contamination control measures" means the management of persons, animals, goods, and facilities that are contaminated, or suspected to be contaminated, in a manner to avoid human exposure to the contaminant, prevent the contaminant from spreading, and/or effect decontamination.

(9)(7) "Department" means the Washington state **department** of health.

(10)(8) "Detention" or "detainment" means physical restriction of activities of an individual by confinement, ~~consistent with WAC 246-100-206(8)~~, for the purpose of monitoring and eliminating behaviors presenting imminent danger to public health and

may include physical plant, facilities, equipment, and/or personnel to physically restrict activities of the individual to accomplish such purposes.

(11) "Disease control measures" means the management of infected persons, persons suspected to be infected, or others who may have had contact with an infected person in a manner to prevent transmission of the infectious agent.

(12) "Disease of suspected bioterrorism origin" means a disease caused by viruses, bacteria, fungi, or toxins from living organisms that are used to produce death or disease in humans, animals, or plants.

(13)(9) "Health care facility" means:

(a) Any facility or institution licensed under chapter 18.20 RCW, boarding home, chapter 18.46 RCW, birthing centers, chapter 18.51 RCW, nursing homes, chapter 70.41 RCW, hospitals, or chapter 71.12 RCW, private establishments, clinics, or other settings where one or more health care providers practice; and

(b) In reference to a sexually transmitted disease, other settings as defined in chapter 70.24 RCW.

(14)(10) "Health care provider" means any person having direct or supervisory responsibility for the delivery of health care who is:

(a) Licensed or certified in this state under Title 18 RCW; or

(b) Is military personnel providing health care within the state regardless of licensure.

(15)(11) "HIV testing" means conducting a laboratory test or sequence of tests to detect the human immunodeficiency virus (HIV) or antibodies to HIV performed in accordance with requirements to WAC 246-100-207. To assure that the protection, including but not limited to, pre- and post-test counseling, consent, and confidentiality afforded to HIV testing as described in chapter 246-100 WAC also applies to the enumeration of CD4+(T4) lymphocyte counts (CD4+ counts) and CD4+ (T4) percents of total lymphocytes (CD4+ percents) when used to diagnose HIV infection, CD4+ counts and CD4+ percents will be presumed HIV testing except when shown by clear and convincing evidence to be for use in the following circumstances:

(a) Monitoring previously diagnosed infection with HIV;

(b) Monitoring organ or bone marrow transplants;

(c) Monitoring chemotherapy;

(d) Medical research; or

(e) Diagnosis or monitoring of congenital immunodeficiency states or autoimmune states not related to HIV.

The burden of proving the existence of one or more of the circumstances identified in (a) through (e) of this subsection shall be on the person **asserting** such existence.

(16) "Infectious agent" means an organism such as a virus, rickettsia, bacteria, fungus, protozoan, or helminth that is capable of producing infection or infectious disease.

(17)(12) "Isolation" means the separation or restriction of activities of infected persons, or of persons suspected to be infected, from other persons to prevent transmission of the infectious agent. "Isolation" means the separation from others of persons infected or suspected to be infected with an infectious agent, or the restriction of their activities, to prevent direct or indirect transmission of the infectious agent.

(18)(13) "Local health department" means the city, town, county, or district agency providing public health services to persons within the area, as provided in chapter 70.05 RCW and chapter 70.08 RCW.

(19)(14) "Local health officer" means the individual having been appointed under chapter 70.05 RCW as the health officer for the local health department, or having been appointed under chapter 70.08 RCW as the director of public health of a combined city-county health department.

(20)(15) "Nosocomial infection" means an infection acquired in a hospital or other health care facility.

(21)(16) "Outbreak" means the occurrence of cases of a disease or condition in any area over a given period of time in excess of the expected number of cases.

(22)(17) "Post-test counseling" means counseling after the HIV test when results are provided and directed toward:

(a) Increasing the individual's understanding of human immunodeficiency virus (HIV) infection;

(b) Affecting the individual's behavior in ways to reduce the risk of acquiring and transmitting HIV infection;

(c) Encouraging the individual testing positive to notify persons with whom there has been contact capable of spreading HIV;

(d) Assessing emotional impact of HIV test results; and

(e) Appropriate referral for other community support services.

(23)(18) "Pretest counseling" means counseling provided prior to HIV testing and aimed at:

(a) Helping an individual to understand:

(i) Ways to reduce the risk of human immunodeficiency virus (HIV) transmission;

(ii) The nature, purpose, and potential ramifications of HIV testing;

(iii) The significance of the results of HIV testing; and

(iv) The dangers of HIV infection; and

(b) Assessing the individual's ability to cope with the results of HIV testing.

(24)(19) "Principal health care provider" means the attending physician or other health care provider recognized as primarily responsible for diagnosis and treatment of a patient or, in the absence of such, the health care provider initiating diagnostic testing or therapy for a patient.

~~(25)(20) "Quarantine" means the separation or restriction on activities of a person having been exposed to or infected with an infectious agent, to prevent disease transmission.~~ "Quarantine" means the separation from others of well persons who had opportunity to acquire an infectious agent through contact with an infected individual, animal, or contaminated environment, or the restriction of their activities, to prevent direct or indirect transmission of the infectious agent.

(26)(21) "School" means a facility for programs of education as defined in RCW 28A.210.070 (preschool and kindergarten through grade twelve).

(27) "Seeking voluntary compliance would be unduly risky" means the local health officer has reason to believe that it is neither reasonable nor practical to obtain voluntary compliance and that a delay that is likely to result from attempting to do so would pose a serious and imminent threat the public's health.

(28)(22) "Sexually transmitted disease (STD)" means a bacterial, viral, fungal, or parasitic disease or condition which is usually transmitted through sexual contact, including:

(a) Acute pelvic inflammatory disease;

- (b) Chancroid;
- (c) Chlamydia trachomatis infection;
- (d) Genital and neonatal herpes simplex;
- (e) Genital human papilloma virus infection;
- (f) Gonorrhea;
- (g) Granuloma inguinale;
- (h) Hepatitis B infection;
- (i) Human immunodeficiency virus infection (HIV) and acquired immunodeficiency syndrome (AIDS);
- (j) Lymphogranuloma venereum;
- (k) Nongonococcal urethritis (NGU); and
- (l) Syphilis.

~~(29)~~(23) "Spouse" means any individual who is the marriage partner of an HIV-infected individual, or who has been the marriage partner of the HIV-infected individual within the ten-year period prior to the diagnosis of HIV-infection, and evidence exists of possible exposure to HIV.

~~(30)~~(24) "State health officer" means the person designated by the secretary of the department to serve as statewide health officer, or, in the absence of such designation, the person having primary responsibility for public health matters in the state.

~~(31)~~(25) "Suspected case" ~~means a person whose diagnosis is thought likely to be a particular disease or condition with suspected diagnosis based on signs and symptoms, laboratory evidence, or both.~~ or "suspected to be infected" means that infection with a particular infections agent is thought likely based on signs and symptoms, laboratory evidence, or contact with an infected individual, animal, or contaminated environment. The opinion of the local health officer shall prevail until the state department of health can be notified, and then the opinion of the executive officer of the state department of health, or any physician he or she may appoint to examine such case, shall be final, in accordance with RCW 70.05.100

~~(32)~~(26) "Veterinarian" means an individual licensed under provisions of chapter 18.92 RCW, veterinary medicine, surgery, and dentistry and practicing animal health care.

[Statutory Authority: RCW 43.20.050. 00-23-120, § 246-100-011, filed 11/22/00, effective 12/23/00. Statutory Authority: RCW 70.24.022, [70.24].340 and Public Law 104-146. 97-15-099, § 246-100-011, filed 7/21/97, effective 7/21/97. Statutory Authority: Chapter 70.24 RCW. 93-08-036 (Order 354B), § 246-100-011, filed 4/1/93, effective 5/2/93. Statutory Authority: RCW 43.20.050 and 70.24.130. 92-02-019 (Order 225B), § 246-100-011, filed 12/23/91, effective 1/23/92. Statutory Authority: RCW 43.20.050. 91-02-051 (Order 124B), recodified as § 246-100-011, filed 12/27/90, effective 1/31/91. Statutory Authority: Chapter 70.24 RCW. 89-07-095 (Order 325), § 248-100-011, filed 3/22/89; 88-17-057 (Order 317), § 248-100-011, filed 8/17/88. Statutory Authority: RCW 43.20.050. 88-07-063 (Order 308), § 248-100-011, filed 3/16/88; 87-11-047 (Order 302), § 248-100-011, filed 5/19/87.]

**WAC 246-100-036 Responsibilities and duties -- Local health officers.** (1) ~~The local health officer shall~~ Local health officers shall establish, in concert with local law enforcement agencies, health care providers, health facilities, emergency management personnel, and any other entity deemed necessary, plans, policies, and procedures for instituting emergency measures necessary to prevent the spread of communicable disease or contamination in accordance with section 246-100-040 WAC. review and determine appropriate action for:

~~(i) Instituting disease prevention and infection control, isolation, detention, and quarantine measures necessary to prevent the spread of communicable disease, invoking the power of the courts to enforce these measures when necessary.~~

(2) Local health officers shall:

(a) Notify health care providers within the health district regarding requirements in this chapter;

(b) Ensure anonymous HIV testing is reasonably available;

(c) Make HIV testing, AIDS counseling, and pretest and post-test counseling, as defined in this chapter, available for voluntary, mandatory, and anonymous testing and counseling as required by RCW 70.24.400;

(d) Make information on anonymous HIV testing, AIDS counseling, and pretest and post-test counseling, as described under WAC 246-100-208 and 246-100-209, available;

(e) Use identifying information on HIV-infected individuals provided according to chapter 246-101 WAC only:

(i) For purposes of contacting the HIV-positive individual to provide test results and post-test counseling; or

(ii) To contact persons who have experienced substantial exposure, including sex and injection equipment-sharing partners, and spouses; or

(iii) To link with other name-based public health disease registries when doing so will improve ability to provide needed care services and counseling and disease prevention; and

(f) Destroy documentation of referral information established in WAC 246-100-072 and this subsection containing identities and identifying information on HIV-infected individuals and at-risk partners of those individuals immediately after notifying partners or within three months, whichever occurs first.

(3) Local health officers shall conduct investigations and institute control measures in accordance with section 246-100-040 WAC. ~~consistent with those indicated in the seventeenth edition, 2000, of *Communicable Diseases Manual*, James Chin, MD, MPH, editor, except:~~

~~(a) When superseded by more up-to-date measures, or~~

~~(b) When other measures are more specifically related to Washington state.~~

(4) A local health department may make arrangements with tribal governments or with state institutions that empower local health officers to conduct investigations and institute control measures in accordance with section 246-100-040 WAC on tribal land or state institutional campuses.

[Statutory Authority: RCW 43.20.050. 00-23-120, § 246-100-036, filed 11/22/00, effective 12/23/00. Statutory Authority: RCW 70.24.125 and 70.24.130. 99-17-077, § 246-100-036, filed 8/13/99, effective 9/1/99. Statutory Authority: RCW 70.24.022, [70.24].340 and Public Law 104-146. 97-15-099, § 246-100-036, filed 7/21/97, effective 7/21/97. Statutory Authority: RCW

43.20.050 and 70.24.130. 92-02-019 (Order 225B), § 246-100-036, filed 12/23/91, effective 1/23/92. Statutory Authority: RCW 43.20.050. 91-02-051 (Order 124B), recodified as § 246-100-036, filed 12/27/90, effective 1/31/91. Statutory Authority: Chapter 70.24 RCW. 89-02-008 (Order 324), § 248-100-036, filed 12/27/88. Statutory Authority: RCW 43.20.050. 88-07-063 (Order 308), § 248-100-036, filed 3/16/88.]

**[NEW SECTIONS IN CHAPTER 246-100 WAC—COMMUNICABLE AND CERTAIN OTHER DISEASES]**

**WAC 246-100-040 Procedures for isolation, and quarantine.**

(1) A local health official shall, when necessary, institute disease control and contamination control measures, including medical examination, testing, treatment, vaccination, decontamination of persons or animals, isolation, quarantine, and inspection and closure of facilities, consistent with those indicated in the 18<sup>th</sup> edition, 2002 of the *Control of Communicable Disease Manual*, published by the American Public Health Association, except:

- (a) When superseded by more up-to-date measures;
- (b) In the case of a disease of suspected bioterrorism origin, when superceded by guidelines issued by the Centers for Disease Control and Prevention;
- (c) When other measures are more specifically related to Washington state; or
- (d) When other measures are necessary to remedy a serious and imminent threat the public's health;

(2) A local health officer who institutes disease and contamination control measures shall make reasonable efforts, which shall be documented, to obtain voluntary compliance with requests for medical examination, testing, treatment, vaccination, decontamination of persons or animals, isolation, quarantine, and inspection and closure of facilities, except when the health officer makes a determination that seeking voluntary compliance would be unduly risky.

(3) A local health officer may issue an order causing a person or group of persons to be involuntarily detained, or petition the superior court *ex parte* for an order to take the person or group or persons into involuntary detention, for purposes of isolation or quarantine when he or she:

(a) Has reason to believe that the person or group of persons is, or is suspected to be, infected with, exposed to, or contaminated with a communicable disease or chemical, biological, or radiological agent that could spread to or contaminate others if remedial action is not taken;

(b) Has reason to believe that the person or group of persons would pose a serious and imminent risk<sup>i</sup> to the health and safety of others if not detained for purposes of isolation and quarantine; and

(c) Has determined that either:

- (i) The person or group of persons has failed to submit to voluntary examination, testing, treatment, vaccination, decontamination, isolation, or quarantine; or
- (ii) Seeking voluntary compliance would be unduly risky;

(4) A local health officer may invoke the powers of police officers, sheriffs, constables, and all other officers and employees of any political subdivisions within the jurisdiction of the health department to enforce orders given to effectuate the purposes of this section in accordance with the provisions of RCW 43.20.050(4) and RCW 70.05.120.

(5) In the event that a local health officer orders the involuntary detention of a person or group of persons for purposes of isolation or quarantine:

- (a) The order shall be for a period not to exceed ten (10) days.

(b) The local health officer shall issue a written order for emergency detention as soon as reasonably possible and in all cases within twelve hours<sup>ii</sup> of detention that shall specify the following:

- (i) The identity of all persons or groups subject to isolation or quarantine;
- (ii) The premises subject to isolation or quarantine;
- (iii) The date and time at which isolation or quarantine commences;
- (iv) The suspected communicable disease or infectious agent if known; and
- (v) The measures taken by the local health officer to seek voluntary compliance or the basis on which the local health officer determined that seeking voluntary compliance would be unduly risky.

(c) The local health officer shall provide copies of the written order for involuntary detention to the person or group of persons detained or, if the order applies to a group and it is impractical to provide individual copies, post copies in a conspicuous place in the isolated or quarantined premises.

(d) Along with the written order, and by the same means of distribution, the local health officer shall provide the person or group of persons detained with the following written notice:

NOTICE: You have the right to petition the superior court for release from isolation and quarantine in accordance with chapter 246-100-055 of the Washington Administrative Code. You have a right to legal counsel. If you are unable to afford legal counsel, then counsel will be appointed for you at government expense and you should request the appointment of counsel at this time. If you currently have legal counsel, then you have an opportunity to contact that counsel for assistance.

(6) A local health officer may petition the superior court for an order authorizing involuntary detention or continued involuntary detention of a person or group of persons for purposes of isolation or quarantine pursuant to this section:

- (a) The petition shall specify:
  - (i) The identity of all persons or groups subject to isolation or quarantine;
  - (ii) The premises subject to isolation or quarantine;
  - (iii) The date and time at which isolation or quarantine commenced or will commence;
  - (iv) The suspected communicable disease or infectious agent if known;
  - (v) The anticipated duration of isolation and quarantine based on the suspected communicable disease or infectious agent if known;
  - (vi) The measures taken by the local health officer to seek voluntary compliance or the basis on which the local health officer determined that seeking voluntary compliance would be unduly risky;
  - (vii) The basis on which isolation and quarantine is justified.

(b) If the person or group of persons has already been detained by order of the local health officer, the petition shall be accompanied by a statement of compliance with the conditions and principles for isolation and quarantine contained in section 246-100-045 WAC;

(c) The petition shall be accompanied by the sworn affidavit of the local health officer attesting to the facts asserted in the petition, together with any further information that may be relevant and material to the court's consideration.

(d) Notice to the persons or groups identified in the petition shall be accomplished in accordance with the rules of civil procedure.

(7) The court shall hold a hearing on a petition filed pursuant to this section within 72 hours of filing, exclusive of Saturdays, Sundays, and holidays.<sup>iii</sup> In extraordinary circumstances and for good cause shown, the local health officer may apply to continue the hearing date on a petition filed pursuant to this chapter for up to ten (10) days, which continuance the court may grant at its discretion giving due regard to the rights of the affected individuals, the protection of the public's health, the severity of the public health threat, and the availability of necessary witnesses and evidence.

(8) The court shall grant the petition if, by a preponderance of the evidence,<sup>iv</sup> isolation or quarantine is shown to be reasonably necessary to prevent or limit the transmission of a communicable or possibly communicable disease to others.

(a) A court order authorizing isolation or quarantine may do so for a period not to exceed thirty (30) days.

(b) The order shall:<sup>v</sup>

(i) Identify the isolated or quarantined persons or groups by name or shared or similar characteristics or circumstances;

(ii) Specify factual findings warranting isolation or quarantine pursuant to this section;

(iii) Include any conditions necessary to ensure that isolation or quarantine is carried out within the stated purposes and restrictions of this section; and

(iv) Be served on all affected persons or groups in accordance with the rules of civil procedure.

(9) Prior to the expiration of a court order issued pursuant to this section, the local health officer may move to continue isolation and quarantine for additional periods not to exceed thirty (30) days each.

(10) State statutes and rules governing procedures for detention, examination, testing, treatment, vaccination, isolation, or quarantine for persons who are infected or are reasonably believed to be infected with a specified communicable disease, including but not limited to tuberculosis, shall supercede this section.

#### **WAC 246-100-045 Conditions and principles for isolation, and quarantine.**

The local health officer shall adhere to the following conditions and principles when isolating or quarantining a person or group of persons:

(1) Isolation and quarantine must be by the least restrictive means necessary to prevent the spread of a communicable or possibly communicable disease to others and may include, but are not limited to, confinement to private homes or other public or private premises;

(2) Isolated individuals must be confined separately from quarantined individuals;

(3) The health status of isolated and quarantined individuals must be monitored regularly to determine if they require isolation and quarantine;

(4) If a quarantined individual subsequently becomes infected or is reasonably believed to have become infected with a communicable or possibly communicable disease, he or she must promptly be placed in isolation;

(5) Isolated and quarantined individuals must be immediately released when they pose no substantial risk of transmitting a communicable or possibly communicable disease to others;

(6) The needs of a person isolated and quarantined must be addressed in a systematic and competent fashion, including, but not limited to, providing adequate food, clothing, shelter, means of communication with those in isolation or quarantine and outside these settings, medication, and competent medical care.

(7) Premises used for isolation and quarantine must be maintained in a safe and hygienic manner to be designed to minimize the likelihood of further transmission of infection or other harms to persons isolated and quarantined;

(8) To the extent possible, cultural, and religious beliefs should be considered in addressing the needs of individuals, and establishing and maintaining isolation and quarantine premises.

(9) Isolation and quarantine shall not abridge the right of any person to rely exclusively on spiritual means alone through prayer to treat a communicable or possibly communicable disease in accordance with the tenets and practices of any well-recognized church or religious denomination, nor shall anything in this chapter be deemed to prohibit a person so relying who is inflicted with a contagious or communicable disease from being isolated or quarantined in a private place of his or her own choice, provided, it is approved by the local health officer, and all laws, rules and regulations governing control, sanitation, isolation and quarantine are complied with. Infected individuals declining treatment may be kept in isolation for the duration of their communicable infection.

**WAC 246-100-050 Isolation and quarantine premises** (1) Entry into isolation and quarantine premises shall be restricted under the following conditions:

(a) The local health officer may authorize physicians, health care workers, or others access to individuals in isolation or quarantine as necessary to meet the needs of isolated or quarantined individuals;

(b) No person, other than a person authorized by the local health officer, shall enter isolation or quarantine premises;

(c) Any person entering an isolation or quarantine facility shall be provided with infection control training and appropriate personal protective equipment.

(d) Any person entering an isolation or quarantine premises with or without authorization of the local health officer may be isolated or quarantined.

(2) Persons subject to isolation and quarantine and persons entering isolation and quarantine premises shall obey the rules established by the state board of health and the orders of the local health officer, and failure to do so shall constitute a misdemeanor consistent with the provisions of RCW 43.20.050(4) and RCW 70.05.120.

**WAC 246-100-055 Relief from isolation and quarantine** Any person or group of persons isolated or quarantined pursuant to this subsection may seek relief from the superior court.

(1) Any person or group of persons may apply to the court for an order to show cause why the individual or group should not be released.

(a) The court shall rule on the application to show cause within forty-eight (48) hours of its filing.

(b) If the court grants the application, the court shall schedule a hearing on the order to show cause with twenty-four (24) hours from issuance of the order to show cause.

(c) The issuance of an order to show cause shall not stay or enjoin an isolation or quarantine order.

(2) An individual or group isolated or quarantined may request a hearing in the court for remedies regarding breaches to the conditions of isolation or quarantine.

(3) A request for a hearing shall not stay or enjoin an isolation or quarantine order.

(4) Upon receipt of a request under this subsection alleging extraordinary circumstances justifying the immediate granting of relief, the court shall fix a date for hearing on the matters alleged no more than twenty-four (24) hours from the receipt of the request.

(5) Otherwise, upon receipt of a request under this section, the court shall fix a date for hearing on the matters alleged within five (5) days from receipt of the request.

(6) In any proceedings brought for relief under this subsection, in extraordinary circumstances and for good cause shown the local health authority may move the court to extend the time for a hearing, which extension the court in its discretion may grant giving due regard to the rights of the affected individuals, the protection of the public's health, the severity of the emergency and the availability of necessary witnesses and evidence.

(7) Any hearings for relief under this section involving a petitioner or petitioners judged to be contagious for a communicable disease will be conducted in a manner that utilizes appropriate infection control precautions and minimizes the risk of disease transmission.

**246-100-060 Right to counsel** A person or group of persons isolated or quarantined pursuant to this section has a right to counsel.

(1) If such persons or groups request counsel and cannot afford counsel, the court shall appoint counsel consistent with the provisions of chapter 10.101 RCW.

(2) The local health officer must provide adequate means of communications between such persons or groups and their counsel.

**246-100-065 Consolidation** In any proceedings brought pursuant to this section, to promote the fair and efficient operation of justice and having given due regard to the rights of affected persons, the severity of the threat to the public's health, and the availability of necessary witnesses and evidence, the court may order the consolidation of individual claims into group claims where:

(1) The number of individuals involved or to be affected is so large as to render individual participation impractical;

(2) There are question of law or fact common to the individual claims or rights to be determined;

(3) The group claims or rights to be determined are typical of the affected persons' claims or rights; and

(4) The entire group will be adequately represented in the consolidation.

**WAC 246-100-070 Enforcement of local health officer orders.** (1) An order issued by a local health officer in accordance with this chapter shall constitute the duly authorized application of lawful rules adopted by the state board of health and must be enforced by all police officers, sheriffs, constables, and all other officers and employees of any

political subdivisions within the jurisdiction of the health department in accordance with chapter 43.20.050 RCW.

(2) Any person who shall violate any of the provisions of this chapter or any lawful rule adopted by the board shall be deemed guilty of a misdemeanor punishable as provided under chapter 43.20.050 RCW.

(3) Any person who shall fail or refuse to obey any lawful order issued by any local health officer shall be deemed guilty of a misdemeanor punishable as provided under chapter 70.05.120 RCW.

**[REVISIONS TO CHAPTER 246-101 WAC—COMMUNICABLE AND CERTAIN OTHER DISEASES]**

**WAC 246-101-505 Duties of the local health officer or the local health department.**

(1) Local health officers or the local health department shall:

- (a) Review and determine appropriate action for:
  - (ii) Each reported case or suspected case of a notifiable condition;
  - (iii) Any disease or condition considered a threat to public health;
  - (iv) Each reported outbreak or suspected outbreak of disease, requesting assistance from the department in carrying out investigations when necessary;
  - (v) ~~Instituting disease prevention and infection control, isolation, detention, and quarantine measures necessary to prevent the spread of communicable disease, invoking the power of the courts to enforce these measures when necessary.~~
- (b) Establish a system at the local health department for maintaining confidentiality of written records and written and telephoned notifiable conditions case reports;
- (c) Notify health care providers, laboratories, health care facilities within the jurisdiction of the health department of requirements in this chapter;
- (d) Notify the department of cases of any condition notifiable to the local health department (except animal bites) upon completion of the case investigation;
- (e) Distribute appropriate notification forms to persons responsible for reporting;
- (f) Notify the principal health care provider:
  - (i) If possible, prior to initiating a case investigation by the local health department; and
  - (ii) For HIV infection, not contact the HIV-infected person directly without considering the recommendations of the principal health care provider on the necessity and best means for conducting the case investigation, unless:
    - ~~(i) The principal health care provider cannot be identified; or~~
    - ~~(ii) Reasonable efforts to reach the principal health care provider over a two-week period of time have failed;~~
- (e) Allow laboratories to contact the health care provider ordering the diagnostic test before initiating patient contact if requested and the delay is unlikely to jeopardize public health;
- (f) Conduct investigations and institute control measures in accordance with section 246-100-040 WAC; ~~consistent with those indicated in the seventeenth edition, 2000 of *Control of Communicable Diseases Manual*, edited by James Chin, published by the American Public Health Association (copy is available for review at the department and at each local health department), except:~~
  - ~~(i) When superseded by more up-to-date measures; or~~
  - ~~(ii) When other measures are more specifically related to Washington state;~~
  - (2) The local health department may negotiate alternate arrangements for meeting the reporting requirements under this chapter through cooperative agreement between the local health department and any health care provider, laboratory or health care facility;
  - (3) Each local health officer has the authority to:
    - (a) Carry out additional steps determined to be necessary to verify a diagnosis reported by a health care provider;

- (b) Require any person suspected of having a reportable disease or condition to submit to examinations required to determine the presence of the disease or condition;
- (c) Investigate any case or suspected case of a reportable disease or condition or other illness, communicable or otherwise, if deemed necessary;
- (d) Require the notification of additional conditions of public health importance occurring within the jurisdiction of the local health officer;

[Statutory Authority: RCW 43.20.050. 00-23-120, § 246-101-505, filed 11/22/00, effective 12/23/00.]

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<sup>i</sup> Standard for TB is “necessary for the preservation and protection of public health”; mental health standard is “presents an imminent likelihood of serious harm, or is in imminent danger because of being gravely disabled,” as is chemical dependency.

<sup>ii</sup> Shelter care provisions for a child requires notification “as soon as possible and in no event” more than 24 hours.

<sup>iii</sup> STD rule requires hearing within 48 hours of issuing order, with a continuance of up to five days at request of person; the chemical dependency statute calls for 72 hours, exclusive of Saturdays, Sundays, and holidays if person is being detained; a child may be held in shelter care longer than 72 hours, excluding Saturdays, Sundays and holidays, without a court order.

<sup>iv</sup> The STD standard of proof for STD statute is “clear and convincing evidence”; the chemical dependency standard is “clear, cogent, and convincing proof”; the child custody standard is “reasonable grounds”

<sup>v</sup> The MEHPA proposes 30 days; the chemical dependency statute state 60 days; mental health limit is 60 days.